

**U.S. Environmental Protection Agency
Oregon Department of Agriculture and Oregon OSHA**

**End-of-Year Review Report for the
Fiscal Year 2011
Pesticide Cooperative Agreements**

February 27, 2012

Summary

This end-of-year evaluation report covers the review of two Oregon state agencies: Oregon Department of Agriculture (ODA) and Oregon Occupational Safety and Health Administration (OSHA). This summary provides an overview of major efforts, accomplishments, and suggestions for improvement.

In Fiscal Year (FY) 2011, ODA implemented a solid enforcement program. ODA significantly improved its pesticide enforcement program by implementing new policies and procedures to address EPA's recommendations during EPA's 2010 end-of-year review. ODA collected more samples during FY 2011 inspections, and ODA developed new standardized procedures related to sample analyses and documentation. EPA found that inspections conducted were thorough, and the enforcement actions issued were consistent with the enforcement response policy. The Department continued to exceed the number of inspections that it projected at the beginning of the year. However, due to limited personnel and resources, ODA did not consistently meet its goal of issuing enforcement actions within 120 days of case initiation; and in one case, the ODA Laboratory had turn-around time for analytical results of more than six months. EPA Region 10 recommends that ODA continues to evaluate its resource needs to address these two issues.

Oregon OSHA continued to implement an excellent Worker Protection Standard (WPS) enforcement program. The compliance officers were well-trained to do their work, and they conducted detailed and thorough inspections. The enforcement actions were timely and consistent with the enforcement response policy.

ODA implemented an excellent certification and training program that addressed the important issues and the needs of applicators in Oregon. In FY 2011, 4,598 private applicators and 4,927 commercial applicators were certified and licensed in Oregon. ODA participated in numerous meetings related to the National Pollutant Discharge Elimination System (NPDES) general permit for pesticide applicators and provided outreach to pesticide user groups regarding the proposed permit. To address the new soil fumigant requirements, ODA developed and distributed two brochures and an advisory notice to potential users.

Oregon OSHA participated in numerous education and outreach training activities related to the WPS in FY 2011: 26 presentations and one pesticide related conference. To assist applicators, Oregon OSHA also added on its website links to a boilerplate Fumigant Management Plan and a WPS applicator records form. Oregon OSHA continues to support the National Institute of Occupational Safety and Health, in addressing barriers to personal protective equipment. In FY 2011, Oregon OSHA developed an Agricultural Jeopardy game to increase awareness of various hazards in the agricultural settings; the game received positive responses in classrooms.

In FY 2011, ODA's Water Quality Pesticide Management Plan was approved by EPA. ODA continued to work in cooperation with State and local agencies regarding pesticide management to protect water quality. The Department conducted meetings and conference calls with them to discuss water quality issues.

ODA provided 15 presentations related to endangered species protection during pesticide certification and training courses. ODA informed growers and pesticide users of the opportunity to comment on the Reasonable and Prudent Alternatives and Measures in the draft Biological Opinions from the National Oceanic and Atmospheric Administration, National Marine Fisheries Service (NOAA Fisheries). ODA participated in numerous meetings and conference calls related to EPA's implementation of the NOAA Fisheries' Biological Opinions. Within the Department's registration program, the staff actively consulted with federal and state fish and wildlife agencies to determine possible impacts of specific pesticide uses on the listed species.

I. BACKGROUND

A. General

1. History

In Oregon, EPA Region 10 has cooperative agreements with two state agencies: ODA and Oregon OSHA. ODA has been the state lead agency for pesticide use enforcement, certification and training of pesticide applicators, the water quality protection program, and the endangered species program. Oregon OSHA has been the primary state agency for enforcing the employer-employee aspects of the Worker Protection Standards.

Funding of the cooperative agreement with ODA is authorized by FIFRA Section 23. For FY 2011, EPA provided ODA with \$498,105 in federal funds through the cooperative agreement. For FY 2011, EPA did not provide Oregon OSHA with any federal funds. Oregon OSHA receives federal funding directly from the U.S. Department of Labor, Occupational Safety and Health Administration. Thus, Oregon OSHA has an un-funded cooperative agreement with EPA Region 10.

In FY 1994, Oregon OSHA formally adopted, by reference, EPA's Worker Protection Standard for Agricultural Pesticides, 40 C.F.R. Part 170, into its administrative rules at Oregon Administrative Rules (OAR) Chapter 437, Division 81 - Agricultural Operations and Farming. As a result of Oregon OSHA's rule adoption, the enforcement of EPA's Worker Protection Standard (WPS) is conducted by Oregon OSHA. In FY 2001, EPA Region 10 and Oregon OSHA entered into an unfunded cooperative agreement. This cooperative agreement between EPA and Oregon OSHA creates a direct working relationship between EPA and Oregon OSHA, with respect to the employer-employee aspect of WPS. Moreover, during FY 2001, ODA and Oregon OSHA finalized an interagency agreement that reflected the on-going coordination and implementation of the WPS activities in Oregon.

2. Project Period

The project period for the cooperative agreement with ODA was from July 1, 2010 to June 30, 2011, which was ODA's FY 2011. The project period for the Oregon OSHA cooperative agreement was from October 1, 2010, to September 30, 2011, which was the same as EPA's FY 2011.

3. Review Methods and Dates

For the ODA, the end-of-year evaluation for FY 2011 was conducted on-site at ODA's Salem office on October 25, 2011, from 9 a.m. to 1 p.m. Pacific Standard Time (PST).

The end-of-year evaluation for Oregon OSHA was conducted on-site at Oregon OSHA's Salem office on October 25, 2011, from 2 p.m. to 4 p.m.

4. Review Participants

On October 25, 2011, Linda Liu, Oregon Project Officer and EPA Region 10 Endangered Species Coordinator, represented EPA and participated in the end-of-year review of ODA's pesticide programs.

The ODA participants at the review were Ray Jaindl, Administrator of ODA's Pesticides and Natural Resources Divisions; Dale Mitchell, Assistant Administrator of ODA's Pesticides Division; Janet Fults, Program Manager of ODA's Registration and User Certification Programs; Mike Odenthal, ODA's Lead Investigation Coordinator; Sunny Jones, ODA's Compliance Specialist; and Steve Riley, ODA's Registration and Water Issues Specialist.

Linda Liu also represented EPA and participated in the Oregon OSHA end-of-year review.

The Oregon OSHA participants during the October 25, 2011, review were Stanton Thomas, Field Enforcement Manager, and Garnet Cooke, Pesticide Coordinator.

B. Scope of Reviews

This report summarizes the results of the end-of-year review for two cooperative agreements: (1) between EPA and ODA; and (2) between EPA and the Oregon OSHA. Program accomplishments, effectiveness, problem areas, suggestions for improvement, and any resolutions to problems are described in the sections below.

II. FINANCIAL

A. Budget Analysis

The following table summarizes funding and expenditures for the cooperative agreement with ODA:

Work Plan Component	EPA Funding	State Funding	Total Funding	Un-obligated funds
Enforcement	\$294,870	\$1,069,335	\$1,364,205	\$0
Certification	\$142,235	\$330,652	\$472,887	\$0
Programs	\$61,000	\$50,099	\$111,099	\$0
TOTAL	\$498,105	\$1,450,086	\$1,948,191	\$0

III. COMPLIANCE AND ENFORCEMENT

A. State Reports from ODA

1. Pesticide Enforcement Cooperative Agreement Accomplishment Report, EPA Form 5700-33H, is attached as Appendix A.
2. ODA's Pesticide Enforcement Outcome Measure Reporting Form, is attached as Appendix B.
3. ODA Investigation and Enforcement FY2011 Summary is attached as Appendix C.
4. Pesticide Container/Containment Inspection and Enforcement Accomplishment Report, EPA Container/Containment Form 5700-33H, is attached as Appendix D.
5. Summary of inspections and enforcement actions. The following tables summarize inspection and enforcement activities that ODA reported to EPA on Form 5700-33H.

Inspections Projected and Completed by ODA. This table compares inspection projections as stated in ODA's work plan and the actual accomplishments.

Inspection Type	Inspections Projected	Inspections Completed	Physical Samples Projected	Physical Samples Analyzed
Agricultural Use Observations	6	8		
WPS - operator/grower information exchange		17		
Soil Fumigant Applications	3	2		
Agricultural Use Follow-up	10	45	65	219
Non-agricultural (ag) Use Observations	6	12		
Non-ag Use Follow-up	10	45	25	48
Experimental Use Permits	2	2		
Producing Establishment	6	6		
Container/Containment	3	3		
Marketplace	20	59		
Big box stores	0	7		
Import	1	1		
Export	1	0		
Applicator Records	20	109		
Restricted Use Pesticide Dealer	30	54		
TOTAL	112	341	90	267

Enforcement Actions reported by the ODA in EPA Form 5700-33H. This table summarizes the enforcement actions taken by the ODA in FY 2011.

Inspection Type	Warnings Issued	Fine Assessed	Licensing Actions	Criminal Actions	SSUROs	Other Actions*
Agriculture (ag) Use Observations						
Ag. Use Follow-up	10	6				
Non-ag. Use Observations	6	1				
Non-ag. Use Follow-up	30	1				
Experimental Use						
Producing Establishment						6
Marketplace	7				3	13
Import						1
Export						
Applicator Records	41	7				
Restricted Use Pesticide Dealer	2	3				
TOTAL	96	18	0	0	3	20

*Other Actions include cases forwarded to EPA for actions

ODA met or exceeded the number of inspections that it projected at the beginning of the year, except in two categories: soil fumigant use observations and export inspections. ODA projected three inspections related to soil fumigant use but only conducted two inspections. In FY 2011, instead of conducting one more soil fumigant use inspection to meet ODA's commitment in the workplan. ODA decided to provide compliance assistance, to educate potential users on the new soil fumigant requirements. Compared to an inspection, ODA thought that compliance assistance was more beneficial to soil fumigant users. ODA received several requests for information on soil fumigant mitigation measures from commercial operators and applicators in Eastern Oregon. As a result, ODA decided to conduct two compliance assistance presentations for operators and applicators: one presentation was held on July 27, 2010, in Ontario, Oregon, and the other on March 9, 2011, in Baker City, Oregon. 52 participants (applicators, handlers, and operators) were reached through these compliance assistance efforts. Export inspections are unpredictable and cannot be accurately projected at the beginning of the year. In FY 2011, ODA did not get any export inspection requests from EPA Region 10. ODA was able to substitute other types of inspections to make up the difference. At the end of the fiscal year, ODA conducted 229 more inspections than it had originally projected in its work plan. ODA also analyzed 177 more samples than it had originally projected.

B. State Reports from Oregon OSHA

1. Pesticide Enforcement Cooperative Agreement Accomplishment Report, EPA Form 5700-33H, from Oregon OSHA is attached as Appendix E.
2. Oregon OSHA's Pesticide Enforcement Outcome Measure Reporting Form, is attached as Appendix F.
3. Oregon OSHA Pesticide Emphasis Program Annual Report, Federal Fiscal Year 2011 is attached as Appendix G.
4. Summary of inspections and enforcement actions. The following tables summarize inspection and enforcement activities that Oregon OSHA reported to EPA on Form 5700-33H.

Inspections Projected and Completed by Oregon OSHA. This table summarizes the inspections conducted by Oregon OSHA in FY 2011.

Inspection Type	Inspections Completed
Agricultural Use	
Tier I WPS	34
Tier II WPS	18
Agricultural Use Follow-up	
Tier I WPS	9
Tier II WPS	2
TOTAL	63

In FY 2011, OSHA conducted 63 WPS inspections, of which 43 were Tier I inspections, 15 were Tier II inspections, and five were facilities that met the qualifications for the “Small Agriculture Exemption”. Oregon OSHA’s projection was 60 inspections.

WPS Enforcement Actions reported by Oregon OSHA in EPA Form 5700-33H

Inspection Type	Formal Actions (Citations) Issued	Cases which had Civil Penalties	Administrative Hearings	Criminal Action	Other Actions (informal advisory letters)
Ag. Use Observations	9	9	0	0	20
Ag. Use Follow-up	1	1	0	0	4
TOTAL	10	10	0	0	24

The Oregon OSHA exceeded the number of inspections that it projected at the beginning of the year. At the end of the fiscal year, Oregon OSHA conducted three more visits than it had originally projected. In addition, the enforcement actions taken in the cases that EPA reviewed

were consistent with the state's enforcement response policy (see discussion on Section D below).

C. Case File and Enforcement Action Evaluation for non-WPS Cases

1. ODA Case Review and Enforcement Action Evaluation

a. *Use Inspections*

For use inspections, ODA made significant improvements in FY 2011, and ODA addressed all recommendations that were made by EPA Region 10 during EPA's FY 2010 review. Among the many improvements made were collecting and analyzing more samples and implementing new standardized procedures related to sample collection, analyses, and documentation. EPA Region 10 reviewed 11 randomly selected use cases to determine if ODA followed established enforcement guidelines and policies. Based on the review of these case files, EPA Region 10 found that the inspections conducted were thorough, the inspection reports were well written, proper documents were attached, necessary samples were taken, and appropriate enforcement actions were taken.

In FY 2011, ODA spent a significant amount of resources to follow-up on complaints received from numerous wheat growers related to pesticide applications near Pendleton, in Umatilla County, Oregon. ODA worked with Oregon State University, Monsanto, Montana Department of Agriculture, and Oklahoma Department of Agriculture on plant symptoms evaluation and analytical method corroboration. In addition, ODA gathered application records from 51 commercial operators who may have applied in the wheat fields. Cases files for these inspections were organized, with good narratives and supporting documents.

During the FY 2011 review, EPA Region 10 made two observations: (1) on occasion, the enforcement actions issued took longer than ODA's target of 120 days; and (2) in one case reviewed by EPA, the turn-around time for an analytical report from the ODA Laboratory took longer than six months. Similar observations were also made by EPA Region 10 during the FY 2010 review. ODA indicated that enforcement actions took longer to issue primarily due to a significant number of cases and limited personnel and resources. EPA is pleased to see that ODA pursued authorization from the Oregon Legislature for investigator positions. The Department was provided authorization in 2009 to hire two new pesticide investigator positions, funded by Other Funds (fees) but limited to the 2009 – 2011 biennium. In 2011, ODA requested the Oregon Legislature to establish these positions as permanent within ODA's budget. For the 2011-2012 biennium, the Oregon Legislature was not willing to establish permanent positions, but it did recognize the value of these positions and authorized continuing these two positions as limited duration. ODA Laboratory indicated that the long turn-around time for analytical reports could be due to too many samples of higher priority or the lack of needed analytical equipment. To address the long turn-around time, the ODA Director's Office established a workgroup to look at workload distribution and to streamline

procedures at the ODA Laboratory. EPA Region 10 recommends that ODA continue to evaluate its resource needs to address the issue of workload and limited resources.

b. Producer Establishment Inspections

In FY 2011, ODA conducted six producer establishment inspections and forwarded the case files for these inspections to EPA Region 10 for review and further actions. EPA Region 10 found that these inspection reports were very thorough, well-written, and included the necessary supporting documents. All attachments were well-organized and marked with tabs. EPA Region 10 found that two of the inspections had blurry photographs of the pesticide product labeling. EPA understands that sometimes it is not possible to take clear photographs of the labeling. EPA recommends that when possible, ODA investigators take clear, close-up photographs of the pesticide product labeling.

c. Other Inspections

EPA Region 10 reviewed five other (market place, restricted use pesticide dealers, and applicator records) inspection case files and found that ODA conducted thorough inspections. The inspection reports were well-written and supporting documents attached. EPA Region 10 found that in one case, the field notes were not attached in the case file. ODA indicated that generally, field notes are included in the files. However, during the transition to ODA's new enforcement database, the notes might have been misplaced.

2. Coordinating Inspections

As a member of the Oregon Pesticide Analytical and Response Center (PARC) Board, ODA continues to coordinate inspections with various state lead agencies. In FY 2011, ODA communicated, coordinated and worked with Oregon OSHA on five incidents related to pesticides.

3. Oversight Inspections Conducted by EPA Region 10

None.

4. Joint Inspections Conducted by EPA Region 10

None.

5. Coordinating Significant Incidents and Situations

There were three cases that met the criteria identified as significant incidents in FY 2011. EPA Region 10 was made aware of these incidents later on during the investigation process. EPA Region 10 recommends that ODA notify the EPA Region 10 Pesticides Program Project Officer immediately upon learning of a significant case. EPA Region 10 would like to be involved

through the case development process, to provide any necessary support and to review the proposed enforcement action before the action is issued.

6. State Recommendations

In addition to conducting end-of-year case file review, ODA requested that EPA Region 10 conduct case review during mid-year so that feedback could be provided to ODA in the same fiscal year. ODA also requested that EPA Region 10 provide the feedback immediately after EPA's review and not wait until the end-of-year report is finalized.

D. Compliance Priority – Worker Protection Standard (WPS)

1. Oregon OSHA Case Review and Enforcement Action Evaluation

EPA Region 10 reviewed 11 WPS cases, to see if Oregon OSHA followed its enforcement guidelines and policies. EPA Region 10 found that the inspections conducted were thorough, the reports were well written, proper documents were attached, and enforcement actions were timely and appropriate. Checklists were used during interviews with handlers and workers. Furthermore, Oregon OSHA used Letter of Corrective Action to ensure and to document that violators came back into compliance.

2. Coordinating Inspections

As a member of the Oregon PARC Board, Oregon OSHA continues to coordinate inspections with various state agencies. Oregon OSHA and ODA have a good working relationship when addressing cases involving allegations of adverse health effects associated with occupational exposure to pesticides. In FY 2011, Oregon OSHA worked on five cases referred by PARC.

3. Oversight inspections Conducted by EPA Region 10

None.

4. Significant WPS Cases (FIFRA Section 27)

There were three cases that met the criteria identified as significant incidents in FY 2011. Oregon OSHA notified EPA Region 10 immediately upon learning of these incidents and communicated to EPA Region 10 of the enforcement actions issued.

5. WPS Compliance Analysis

In FY 2011, Oregon OSHA identified 258 pesticide-related violations based on the inspections conducted. Of the 258 violations, 150 were handler related: 49 were related to personal protective equipment, 12 were related to training, 9 were related to Central Posting, 14 were related to decontamination, and 33 were related hazard communication. Of the 258 violations detected, 79 were worker related: 38 were Central Posting deficiencies, 16 were training related, and 10 were related to notification requirements.

6. State Feedback

None.

E. **Inspection and Enforcement Support**

1. Training at ODA

To adequately investigate violations of state pesticide laws, a state needs to ensure that state inspection and enforcement personnel are trained in such areas as health and safety, violation discovery, obtaining consent, sampling procedures, case development procedures, and maintenance of case files. A continuing education program is also crucial so that the State staff can keep abreast of legal developments and technological advances. ODA has four investigators with EPA inspector credentials. These investigators obtain their eight-hour health and safety refreshers online. In addition, ODA investigators also attend grower/applicator meetings to enhance the knowledge of the regulated community. On February 22 and 23, 2011, one ODA investigator attended the soil fumigant training sponsored by the Washington State Department of Agriculture in Pasco, Washington. On April 5 and 6, 2011, the ODA investigators participated in the OR-OSHA Annual Pesticide Program Meeting in Salem, Oregon.

2. Training at Oregon OSHA

Each year, all Oregon OSHA compliance officers attend the Annual Pesticide Program Meeting. During these meetings, refresher courses on health and safety and case development are provided. Lessons learned during the past year are also discussed. The Oregon OSHA FY 2011 annual meeting featured speakers from NIOSH's Personal Protective Equipment Technology Laboratory, National Pesticide Information Center, Oregon Health and Science University's Center for Research on Occupational and Environmental Toxicology, Oregon State University, ODA, and the Pacific Northwest Agriculture Safety and Health Center.

3. Quality Assurance

In April 2010, EPA Region 10's Office of Environmental Assessment conducted a Quality System Review on ODA Pesticides Division's Quality System. While EPA found no deficiencies during this audit, EPA made seven recommendations to ODA's Pesticides Program and ODA's Laboratory. The recommendations made and the status of each recommendation are as follows:

- a. *Recommendation:* Update the Quality Management Plan (QMP) to reflect current data backup and document retaining policies.

Status: ODA will include in the QMP ODA's current data backup and document retaining policies in the next update, with expected completion in FY 2013.

- b. *Recommendation:* Track and maintain all inspectors' training documents in one place.

Status: ODA indicated that this recommendation was addressed. ODA Pesticides Division Assistant Administrator tracks and maintains all inspectors' training documents

- c. *Recommendation:* Put in security measure to limit access to enforcement database.

Status: ODA's new enforcement database includes security measures to limit access to the database. While every investigator can view all the case files, only the investigator assigned can make changes to the information for his/her case. Once a case is closed, no revisions can be made to the narrative portion of the case file without permission from the system administrator.

- d. *Recommendation:* Use a second source of standard per method for calibration and quality control checks.

Status: ODA indicated that the use of a second source of standard per method is a good practice. However, the ODA Laboratory has not discovered a mechanism to make the use of second source standards economically and process feasible. If required to use a second source standards, the ODA Laboratory will do its best to find them.

- e. *Recommendation:* Update laboratory staffs' training files on a regular basis.

Status: In January 2012, a Quality Assurance Officer (QAO) position was filled at the ODA Laboratory. The QAO will be developing a process of tracking staff training. It is the QAO's goal that a plan for tracking staff training be submitted to the ODA Laboratory Manager by the end of March 2012.

- f. *Recommendation:* Require Initial Demonstration of Capability (IDOC) per method for all laboratory analysts before they analyze samples and require Continuing Demonstration of Capability for all analysts.

Status: The ODA Laboratory indicated that IDOCs will be incorporated into the training process with documentation. The number of IDOCs performed by staff has increased since April 2010 and continues as part of our training. For Continuing Demonstrations of Capability (CDOC), ODA Laboratory Services participates in Proficiency Testing (PT) and Check Sample programs throughout the year. The ODA Laboratory will continue to do so as a mechanism to demonstrate CDOC. To address compound/matrix combinations that cannot be obtained via commercial PT providers, the ODA Laboratory is developing cost and time effective procedures. It is the ODA Laboratory's goal to have these procedures in place for the 2013 calendar year.

- g. *Recommendation:* Update Laboratory Information Management System (LIMS).

Status: The ODA Laboratory is in the process of seeking approval for the purchase of a new LIMS. Once approved, the Laboratory will move forward with the request for proposals/selection. If all goes well, implementation may begin within one year.

EPA Region 10 is encouraged by the steps taken by ODA and the positive direction that ODA took to address the recommendations related to quality assurance.

F. Special Activities Conducted by EPA and ODA

On January 25, 2010, a local interest group, the Pitchfork Rebellion, sent a petition to EPA, requesting that EPA establish pesticide application buffers and investigate pesticide drift from forest applications in the Triangle Lake area in Lane County, Oregon. As a result of this petition, the Office of Pesticide Programs (OPP) at EPA Headquarters opened a docket (EPA-HQ-OPP-2010-0265) from April to August 2010, to receive public comments on the petition. Since August 2010, OPP has been working on responses to the comments received. EPA Region 10 has also been working on the concerns expressed by the Pitchfork Rebellion. On September 15, 2010, EPA Region 10 referred the concerns expressed related to health effects to the regional office of the Agency for Toxic Substances and Disease Registry (ATSDR). Since the referral, EPA Region 10 has been actively working with the Oregon Pesticide Analytical and Response Centers (PARC) member agencies and ATSDR on an Exposure Investigation, to ascertain the nature and extent of the alleged pesticide exposures. Activities in EPA's FY 2011 included (1) engaging with the stakeholders, the forest resource industry, and the community, to hear their perspectives; (2) developing a Sampling and Analysis Plan (SAP) for water, soil, and food; and (3) collecting drinking water, soil, and home grown food samples from 66 individuals in 38 households in the Triangle Lake area.

As a member of the PARC Board, ODA has also been actively assisting Oregon Health Authority (OHA) in OHA's Exposure Investigation. In ODA's FY 2011, ODA worked closely with OHA on the Exposure Investigation, coordinated meetings and conference calls, developed an SAP for soil and food, and participated in meetings with the community members and industry representatives.

G. Performance Measures for Enforcement

ODA's Program Assessment Rating Tool (PART) performance measures can be found in Appendix B. Oregon OSHA's PART performance measures can be found in Appendix F.

H. New Legislation and Regulations

There was no new legislation or regulations in FY 2011.

I. Action Items from FY 2010 End-of-Year Reviews

In FY 2010, EPA Region 10 made 13 recommendations to ODA's enforcement program, and ODA addressed them as follows:

1. EPA Recommendation: Do not report visits to facilities that do not use pesticides as meeting a commitment in the cooperative agreement.

ODA Action: ODA addressed this recommendation. ODA no longer reports visits to facilities that do not use pesticides as meeting a commitment in the cooperative agreement.

2. EPA Recommendation: Evaluate ODA's resource needs so that the turn-around time for the issuance of enforcement actions can be improved.

ODA Action: ODA attempted to address this recommendation. ODA requested the Oregon Legislature to convert two pesticide investigator positions to permanent positions from limited duration positions. The Oregon Legislature was not willing to establish permanent positions, but it did recognize the value of these positions and authorized continuing these two positions as limited duration.

3. EPA Recommendation: Evaluate ODA's resource needs and improve the turn-around time for laboratory analytical reports.

ODA Action: ODA attempted to address this recommendation. ODA's Director's Office established a workgroup to look at workload distribution and to streamline procedures at the ODA Laboratory.

4. EPA Recommendation: Evaluate ODA's resource needs so more samples could be taken and analyzed.

ODA Action: ODA addressed this recommendation. In FY 2011, 267 samples were taken and analyzed, compared to 132 samples in FY 2010. Moreover, ODA started updating its Inspectors Manual in FY 2011. The updated Manual includes new guidance and procedures associated with environmental samples. ODA coordinated with EPA Region 10 staff in developing these new guidance and procedures.

5. EPA Recommendation: Document the rationale of why samples were or were not collected and analyzed in the inspection reports.

ODA Action: ODA addressed this recommendation. In FY 2011, ODA developed a new procedure: a Sampling Plan section was added in the narrative portion of all inspection reports. This Sampling Plan section includes a description of the goals and objectives of sample collection and the rationale of why samples were or were not collected and analyzed.

6. EPA Recommendation: Include the rationale for sample locations and type in the case files.

ODA Action: ODA addressed this recommendation. ODA's new procedure requires investigators to include the rationale for sample locations and type in the Sampling Plan section of the narrative portion of the inspection reports.

7. EPA Recommendation: Record in the files the rationale for not making any follow-up site visits after a complaint is received.

ODA Action: ODA addressed this recommendation. ODA's new procedure requires a rationale to be included in the Complaint Case file if no follow-up visits were made. During the FY 2011 end-of-year review, EPA Region 10 randomly selected 10 complaints to see if a rationale was included in each complaint. EPA Region 10 found that the rationales for no additional follow-up were included in all 10 files reviewed.

8. EPA Recommendation: Do not track in ODA's enforcement database general inquiries or questions.

ODA Action: ODA addressed this recommendation. ODA no longer tracks general inquiries in the enforcement database.

9. EPA Recommendation: Communicate back to the complainants to inform them of ODA's follow-up actions or the outcomes of the investigations.

ODA Action: ODA reported that this recommendation was addressed. ODA's new procedure requires investigators to communicate back to the complainants the outcomes of the investigations and to document those communications in the narrative report. However, because this recommendation was made by EPA Region 10 in the third quarter of FY 2011, the cases that were closed prior to the third quarter did not include any communications or the documentation of these communications.

10. EPA Recommendation: If application records show possible misuse of pesticides, investigate the incident further by conducting an inspection.

ODA Action: ODA addressed this recommendation. If there is an appearance of misuse, ODA requires an investigator to conduct a follow up inspection and to document the findings. ODA implemented a new procedure requiring all inspection reports be reviewed by a case reviewer for completeness within fourteen days of the report completion date. If the follow up inspection is not complete, the case reviewer will request the inspection be completed.

11. EPA Recommendation: In the narrative portion of the inspection report, use the phrase "insufficient evidence to prove or disprove the allegation", instead of "no violation was found" when a use investigation could not link an application to an allegation.

ODA Action: ODA addressed this recommendation. ODA established a new procedure for the narrative report: when there is insufficient evidence to show the link between any application to the allegation, the phrase "unable to determine the source", or "insufficient evidence was found to determine a violation", or some similar language is used in the inspection report.

12. EPA Recommendation: Develop a standard case file structure so case reviewers can easily refer to all supporting documentation and enforcement actions.

ODA Action: ODA addressed this recommendation. In FY 2010 and FY 2011, ODA contracted with a software developer to create a new enforcement database. On July 1, 2011, ODA started using this new database. With the new database, one can track pesticide incidents, case information, and enforcement responses. All investigators and case reviewers follow the same sequence for completing the forms and checklists in the new database.

13. EPA Recommendation: Consistently issue Letters of Advisement to the surrounding applicators who possibly drifted, to inform them that pesticides were found off-target in the area and that they should review their practices to ensure the pesticides they apply remain on the target site. This applies when the source of drift was difficult to isolate due to multiple users in the area at the same time using the same pesticide.

ODA Action: ODA addressed this recommendation. ODA now issues Letters of Advisement to these applicators.

There was no action item from the previous Oregon OSHA end-of-year review.

J. Conclusions and Recommendations for Compliance/Enforcement

1. ODA

ODA has a solid enforcement program. EPA Region 10 is encouraged that ODA adequately addressed all recommendations made by EPA Region 10 during EPA's FY 2010 end-of-year review and that ODA implemented many new procedures and processes in FY 2011 to improve ODA's enforcement program. ODA conducted thorough inspections, with adequate narrative reports and supporting documents, and ODA issued enforcement actions that were consistent with ODA's enforcement response policy. In FY 2011, ODA exceeded the number of inspections and the number of samples analyzed that it projected at the beginning of the year. EPA Region 10 is impressed by the additional number of samples collected and analyzed by ODA.

For many years, EPA Region 10 has recommended that ODA evaluate its resource needs to address the issue of case load and limited resources. Due to limited personnel and resources, ODA did not consistently meet its goal of issuing enforcement actions within 120 days of case initiation. In one incident, the ODA Laboratory had turn-around time for analytical results of more than six months.

EPA Region 10 has the following recommendations for ODA's enforcement program:

- a. Continue to evaluate ODA's resources needs to address the issue of case load and limited resources;

- b. Continue to improve the turn-around time for analytical results at the ODA Laboratory.
- c. Notify EPA Region 10 and request for approval when substituting an inspection for another inspection or other work; e.g., compliance assistance; and
- d. Notify the EPA Region 10 Pesticides Program Project Officer immediately upon learning of a significant incident.

2. Oregon OSHA

Oregon OSHA continues to implement an excellent WPS enforcement program. The on-going commitment to training ensures compliance officers are well-qualified to do their work. In FY 2011, Oregon OSHA exceeded the projected number of inspections. Compliance officers conducted thorough and well-documented inspections. The enforcement actions were timely and consistent with the enforcement response policy.

L. Non-Inspection Activities

ODA continued to provide outreach to the regulated community. Investigative staff provided many presentations on topics related to pesticide enforcement. In addition, the Department continued to distribute its enforcement related pamphlets: *Pesticides - Investigations and Enforcement*, *Oregon Public Applicator Responsibilities - What You Need to Know Before You Apply Pesticides*, and *Oregon Pesticide Consultant Responsibilities - What You Need to Know Before You Apply Pesticides*. In FY 2011, an ODA investigator conducted two soil fumigant compliance assistance sessions for pesticide operators, applicators, and handlers in Eastern Oregon.

Oregon OSHA conducted many outreach and education activities in FY 2011. See Section IV.A.2 below for more details.

IV. PROGRAMS

A. Worker Safety

1. Certification and Training of Pesticide Applicators

a. *Previous Recommendations*

There were no formal recommendations in the prior assessment of the Oregon Pesticide Applicator Certification and Training (C&T) Program.

b. *Workplan Commitments and Accomplishments*

ODA met its Applicator Certification and Training Program commitments in FY 2011. Accomplishments in FY 2011 are listed below. A detailed description of the Oregon Department of Agriculture's C&T program can be found in Appendix H. In addition, ODA entered Oregon's certification and training information into the Certification Plan and Reporting Database (CPARD). CPARD provides a universal format for EPA to maintain information for each state in regards to pesticide certification activities. Oregon's 2011 information may be accessed at <http://cpard.wsu.edu>.

c. *Program Accomplishments*

(1) ODA met all certification and training program projections in FY 2011. A total of 4,598 private applicators and 4,927 commercial applicators were certified and licensed in Oregon.

(2) ODA awarded a contract to Metro Institute to implement a computer based testing process related to pesticide examinations. The new process allows applicators to receive test results immediately, minimizing the time required to become licensed. This new process was completed in FY 2011, with the majority of the testing centers converted to a computer based testing process.

(3) Testing centers are audited a minimum of once every year to confirm the presence of all exams. In FY 2011, ODA staff audited all 18 Oregon testing centers.

(4) ODA certification staff continued to ensure that up-to-date testing and licensing information was posted on its pesticides program website at <http://www.oregon.gov/ODA/PEST/index.shtml>. Some of the topics found on this website include test scores, pesticide examination study materials, on-line registration for examinations, and links to the Oregon pesticide laws and regulations. In FY 2011, ODA also added links for Integrated Pest Management educational resources, EPA's Soil Fumigation Toolbox, and water quality resources.

(5) In FY 2011, ODA provided materials for pre-license training of private applicators in Spanish.

- (6) ODA participated as presenters in 137 recertification training sessions. The presentation topics primarily focused on label interpretations, drift label language, the proposed National Pollutant Discharge Elimination System (NPDES) general permit, endangered species protection, soil fumigant label changes, and Restricted Use Pesticides (RUP).
- (7) ODA evaluated recertification courses provided to applicators and consultants. ODA accredited 1,061 continuing education classes in FY 2011.
- (8) ODA updated the Oregon Pesticide Recertification Course Accreditation Guide. This document is posted on ODA's web site.
- (9) In FY 2011, ODA was active in the State FIFRA Issues Research and Evaluation Group (SFIREG). ODA management and staff represented Region 10 states for full SFIREG, Pesticide Operations and Management Committee, and the Environmental Quality Issues Committee.
- (10) ODA attended the May 2011 Western Region Pesticide Meeting, during which a variety of current topics were presented and discussed.
- (12) ODA provided comments to EPA regarding the implementation of the soil fumigant label changes and participated on many conference calls with EPA.
- (13) ODA participated in numerous meetings related to the NPDES general permit for pesticide applicators and provided outreach to pesticide user groups regarding the proposed permit.
- (14) ODA developed a pamphlet for aerial applicators related weather conditions' impact on drift. ODA mailed this new pamphlet and an EPA Aerial Applicator's Manual to each aerial applicator in Oregon.
- (15) In FY 2011, EPA provided ODA \$30,000 for outreach efforts on the new pesticide label changes for soil fumigants. Highlights of the ODA activities related to these efforts included the development and distribution of two brochures and an advisory notice to potential users and the development of powerpoint presentations for ODA's use at 29 accredited courses. For more details on ODA's activities related to soil fumigants, see Appendix I.

d. *State Feedback*

ODA would like to be better informed of EPA's tribal C&T activities, so ODA can fully evaluate their impacts to ODA's C&T program.

e. *C&T Program Recommendations*

None.

2. Worker Protection Program

a. *Previous Recommendations*

None.

b. *Work Plan Commitments and Accomplishments*

(1) Oregon OSHA participated in numerous education and outreach training activities related to WPS in FY 2011: one pesticide related conference and 26 agriculture classes and presentations on WPS, personal protective equipment, mixing and loading, and respiratory protection. For more details, see Oregon OSHA Pesticide Emphasis Program Annual Report, Federal Fiscal Year 2011 (Appendix G).

(2) ODA and Oregon OSHA continued to coordinate with the Oregon State University-Extension Service (OSU-ES) to help ensure that WPS information and safety training were provided to employers, trainers, workers, handlers, and other affected individuals and groups.

(3) Oregon OSHA posted on its website links to a boilerplate Fumigant Management Plan and a blank WPS applicator records form. Applicators can easily complete these forms on their computers and print them for their use.

(4) Oregon OSHA developed an Agricultural Jeopardy game to increase awareness of various hazards in the agricultural setting. This game includes numerous categories which are pesticide related. It provides a fun and interactive means of communicating hazards present in agriculture.

(5) Oregon OSHA distributed compliance assistance materials through Oregon OSHA's Resource Center. Materials included but were not limited to the EPA "How To Comply with the Worker Protection Standard for Agricultural Pesticides – What Employers Need to Know" and pesticide related videos. A list of all publications and videos available can be found at the following web page:
http://www.cbs.state.or.us/external/osha/standards/resource_center.html.

c. *State Feedback*

None.

d. *Worker Protection Program Recommendations*

None.

B. Water Quality Program

1. Previous Recommendations

None.

2. Workplan Commitments and Accomplishments

ODA's accomplishments in FY 2011 are summarized below. A detailed description of ODA's water quality program can be found in the ODA's report (Appendix J).

Since FY 2008, the Oregon Water Quality Pesticide Management Team (WQPMT) has coordinated monitoring and other activities to improve water quality related to pesticides. Team members consist of representatives from ODA, OHA, Oregon Department of Forestry, and Oregon Department of Environmental Quality (DEQ). In FY 2011, ODA conducted many meetings with the WQPMT members to discuss water quality and monitoring issues.

In FY 2011, ODA coordinated with the Oregon WQPMT to finalize the Oregon Water Quality Pesticide Management Plan (Plan). The Plan was approved by EPA Region 10 in June 2011.

ODA evaluated available pesticide data, identified pesticides of interest and pesticides of concern, and managed pesticides of concern. In FY 2011, ODA had 73 active ingredients listed as pesticides of interest (16 were added to the original list of 57), eight active ingredients listed as pesticides of concern, two active ingredients (azinphos methyl and chlorpyrifos) under active management, and two active ingredients (azinphos methyl and chlorpyrifos) under active management with demonstrated progress. A summary of ODA's pesticide-specific and program management activities can be found in EPA's Pesticides of Interest Tracking System (POINTS) database at <http://www.points.wsu.edu/reports/fullReport.aspx>.

3. State Feedback

ODA requested that EPA update its list of 57 pesticides of interest. ODA indicated that newer active ingredients that pose high risk to aquatic organisms are coming into the market; e.g., some strobilurins fungicides.

4. EPA Recommendations

None.

C. Endangered Species Protection Program

1. Previous Recommendations

In FY 2010, EPA Region 10 recommended that ODA inform EPA Region 10 in advance of any written correspondence from ODA's upper management to EPA Headquarters, and ODA indicated that ODA would do that. There was no correspondence in FY 2011 from ODA to EPA.

2. Workplan Commitments and Accomplishments

ODA met its Endangered Species Protection Program commitments in FY 2011. A detailed description of the ODA's ESPP can be found in Appendix K. The OPP Field Program for Endangered Species Data Collection Sheet for FY 2011 End-of-Year Report is attached in Appendix L. Major accomplishments in FY 2011 are listed below:

- a. ODA informed growers and other pesticide users of the opportunity to comment on the draft NOAA Fisheries Biological Opinions on the impacts of captan, chlorothalonil, 2,4-D, diuron, linuron, and triclopyr BEE to Pacific salmonids;
- b. ODA participated in numerous meetings and conference calls related to EPA's implementation of the NOAA Fisheries' Biological Opinions;
- c. ODA provided outreach and education to pesticide applicators. Fifteen (15) presentations were made during pesticide certification and training courses;
- d. ODA continued to work with U.S. Fish and Wildlife Service, NOAA Fisheries, and Oregon Department of Fish and Wildlife on registrations issued for emergency exemptions (FIFRA Section 18) and special local needs (FIFRA Section 24(c)); and
- e. ODA's web site has a link to EPA's Endangered Species Protection Program web site. ODA has expanded the number of web links that are connected to its web page. Now ODA's web page has links to EPA, NOAA Fisheries, U.S. Fish and Wildlife Service, Oregon Natural Heritage Program, and Oregon Department of Fish and Wildlife Program web pages. ODA routinely reviews additional links and monitors and updates information on its web site.

3. State Feedback

ODA requested that EPA add information related to pesticide buffers directly on the product labels in a consistent and easy to find location. ODA indicated that many growers do not want to have to go to a computer to calculate a buffer zone. In addition, ODA requested that EPA use the same language on the label; e.g., not "no spray zone" on one label and "buffer" on another.

4. EPA Recommendations

None.